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Racism, racial discrimination, xenophobia and related forms of intolerance

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to Greece: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Greece.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to Greece: comments by the State*

1. The birth registration of Roma children regardless of their nationality, takes place in accordance with provisions of Law 344/1976 "documents indicating civil status". In the Civil Registration Offices within the Municipalities of the country, civil status documents are drawn up by the Registrars, certifying vital events, such as births, deaths, marriages etc of the Greek citizens and foreign nationals. There are not any restrictions which apply on civil status documents issued by the competent authorities to the foreigners residing in Greece.

2. Furthermore, specific laws regulate the acquisition of the Greek citizenship or the legal residence status of foreign nationals in Greece thus providing this category of people with legal rights which derive from the above status.

3. Roma who are Greek nationals form an integral part of the Greek population, they are subject to the Constitution and the national laws and enjoy all civil and political rights guaranteed to Greek citizens, provided they fulfill the necessary institutional requirements. In this respect, a prerequisite is their registration in the civil registers — so that the Greek citizenship can be proved-in accordance with article 6 of the PD 497/1991 as well as article 1 of the Ministerial Decision 22026/4813/10.3.1992 issued by delegation of the above law, which lays down that the birth-related civil status document is the necessary documentation for the registration in the Civil Registration Offices of the country. However, we would like to note that, because many people among the Roma population usually fail to register the birth of a child, the registration in the Civil Registration Offices becomes difficult, if not impossible.

4. The Directorate of Civil and Municipal Status thinks that the registration of the Roma population in the Civil Registration Offices should require not only the birth-related civil status document but also a Decision issued by the Secretary General of the Decentralized Administration Authority determining their Greek citizenship.

5. Furthermore, according to the Directorate of Civil and Municipal Status its units may contribute to the elaboration of an action plan concerning the Roma population census, mainly for those cases of the population groups that are proved to be in need of registration.

6. Concerning the political Party Golden Dawn and its actions, Greek parliament lifted the immunity of six leading members of this party in October 2013, in order to enable deeper investigation into their alleged involvement in serious criminal offences.

7. Furthermore, Law 4203/2013 introduced new provisions concerning the conditions for the distribution of public funding of political parties. Following this law a Joint Ministerial Decision which predicted suspension of any kind of State funding for Golden Dawn has been issued. According to this Decision no payment for this party has been effectuated since that time.

8. «In September 2014 Parliament adopted **Law 4285/2014, amending Law 927/1979**, with the aim to strengthen the country's criminal anti-racism legislation and adjusting the relevant legislative framework with EU Council Framework Decision 2008/913/JHA.

9. Law 4285/2014 punishes, inter alia, public incitement to acts or activities which may result to discrimination, hatred or violence against individuals or groups of individuals defined by reference to race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, or disability, in a manner which endangers public order or threatens life, liberty or physical integrity of the abovementioned persons, the establishment of or participation in an organization or union of persons of any kind systematically

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pursuing the commission of the abovementioned acts, under the circumstances prescribed by the law, the act of publicly condoning, trivializing or maliciously denying the commission or seriousness of crimes of genocide, war crimes, crimes against humanity, the Holocaust and Nazi crimes, recognized by decisions of international courts or the Hellenic Parliament. In addition, the law introduces the liability of legal persons.

10. In particular, art. 2 of the abovementioned "anti-racist" law provides that "Whoever intentionally publicly, orally or through the press, the internet or any other means or manner, condones, trivializes or denies the existence or seriousness or crimes of genocide, war crimes, crimes against humanity, the Holocaust and crimes committed by Nazis, recognized by judgments of international courts of law or the Hellenic Parliament, and such conduct is directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity or disability, when such conduct is carried out in a manner likely to incite violence or hatred or which is threatening or abusive against a group or member of such a group, it shall be punished by the sentences referred to in paragraph 1 of the preceding article (art. 1)"

11. According to article 81A, inserted in the Criminal Code by the above - mentioned law 4285/2014, the commission of any offence on racist grounds (race, colour, religion, descent, national or ethnic origin, sexual orientation, disability, gender identity and, recently added, gender characteristics) constitutes an aggravating circumstance leading to penalty enhancement. A **recent legislative amendment by Law 4356/2015, which eliminated the notion of "hatred" from the elements of the crime facilitates even more the applicability of art. 81A.**

12. The punishable acts under law 927/1979, as well as any crime committed as a result thereof, are prosecuted *ex officio*. Victims of such offences are exempted from the obligation to pay a fee when submitting a criminal complaint or participating as a civil party in a criminal procedure; non-EU nationals who are victims or material witnesses of racist acts may be granted a residence permit on humanitarian grounds.

13. Moreover, Law **4356/2015 establishes a new criminal offence** (art. 361B of the Criminal Code) punishing the provision of goods and services with the contemptuous exclusion of a person on racist grounds.

14. Furthermore, in accordance with Article 2 of Law 4203/2013, **state financing of political parties whose leaders or a number of their elected officials are charged with the crime, in particular, of membership of a "criminal organization"** and put on pre-trial detention, is suspended by decision taken by the Parliament.

15. Along with the strengthening of the legislative framework, a number of **operational measures** have been taken. **Data collection** with regard to racist crimes has significantly improved and is expected to further improve following the operation of the new computerization system of the courts. A unified mechanism and database for registering alleged incidents of racist and xenophobic violence (including allegations against police personnel) has been created. Further improvements to the data collection system will be considered by the recently established National Council against Racism and Intolerance in cooperation with international organizations such as OSCE/ODIHR.

16. With respect to the "Golden Dawn Trial", the leader and members (including Members of Parliament) of the political party "Golden Dawn" were placed in September 2013 under judicial investigation for membership of a "criminal organization". Almost 70 individuals have been indicted. The trial opened on 20 April 2015 and is closely followed by civil society organizations, with full respect for the right to a fair trial, in particular through the "Golden Dawn Watch".

17. Following ECRI's recommendation, Law 4356/2015 provides for the establishment of the **"National Council against Racism and Intolerance"** with the participation, inter alia, of the National Commission of Human Rights, the Racist Violence Recording Network (where 36 NGOs participate), the UNHCR and the Greek Ombudsman. The purpose of this Council is the development of a comprehensive anti-racist strategy, the

coordination of all relevant stakeholders and the monitoring of the application of international, European and national legislation. A **National Action Plan against Racism** and Intolerance is also among the tasks of the Council. The Council met for the first time on 20 April.

18. Furthermore, **five special prosecutors** have been appointed in Athens, Piraeus, Thessaloniki, Patras and Heraklion for the investigation of racist crimes.

19. With regard to the **protection of victims of hate crimes** a number of measures have been adopted in the last few years.

20. First of all, victims of serious hate crimes with a low income are provided with free legal aid. In particular, they have the right to a counsel appointed by the state for filing a criminal complaint and participating in the criminal proceedings against the perpetrators.

21. Victims of hate crimes prosecuted ex officio (serious crimes), victims of hate speech and all beneficiaries of free legal aid are exempted from the obligation to pay a fee when submitting a criminal complaint.

22. Moreover, non-EU nationals who are victims or material witnesses of racist acts may be granted a residence permit on humanitarian grounds (art. 19 A, law 4251/2014 as amended by law 4332/2015).

23. Furthermore, many initiatives have been undertaken to address underreporting. Civil society organizations, such as NGOs and the Racist Violence Recording Network created by UNHCR and the National Commission for Human Rights with the participation of 38 NGOs, have greatly contributed in improving reporting of such crimes. In the same vein, the above mentioned National Council against Racism and Intolerance which was recently established, with a very broad and inclusive composition, is expected to contribute even further to the adoption of measures for the protection and empowerment of hate crime victims.

24. Last but not least, the forthcoming transposition of Directive 2012/29/EU on the rights, support and protection of victims of crime is going to improve even further **protection of victims of such crimes.**

25. In reference of the legislative initiative on the ratification of the Council of Europe's **Cybercrime** Convention and the Additional Protocol thereto concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems and the transposition of the Directive 2013/40/EU on attacks against information systems, the adoption of the bill by the Hellenic Parliament is pending after the recent completion of the public consultation process.

26. Finally, concerning **activity at EU level,** the Ministry of Justice, Transparency and Human Rights was an active member of the European Commission Expert Group on the Implementation of CFD 2008/913/JHA and is also represented at the FRA Working Group on Improving Reporting and Recording of Hate Crimes.

27. In addition, the Ministry has a very constructive **cooperation with the Council of Europe and OSCE** as regards training of police officers, judges and public prosecutors on racist violence issues.

28. With regard to the **fight against racism and discrimination based on sexual orientation or gender Identity** in particular, apart from the inclusion of such grounds in the anti-racism legislation and soon in Law 3304/2005 on equal treatment (as regards gender identity and gender characteristics), which is currently being amended, the law on the **civil partnership** pact was recently extended by the above-mentioned Law 4356/2015 to same-sex couples, recognizing family ties between the parties and conferring rights similar, in many fields, to those deriving from marriage. It is considered that the recognition of same-sex partnerships will contribute to the elimination of social prejudices and stereotypes against LGBTQI persons. Furthermore, **art. 347 of the Criminal Code** providing for a higher age of consent for male homosexual acts **was abolished** by the same law, effectively resulting to equalization of the age of consent.

29. In the same vein, new draft bills **on the review of family law and legal gender recognition** are being elaborated by the competent law-making committee. These legislative initiatives shall be noted as further steps to the enhancement and deepening of the protection of rights, specifically as regards equality, non-discrimination and respect of human dignity.

30. Concerning **equality and non-discrimination**, the respective principles are established by the Greek Constitution and they are specified in the respective legal framework consisting of a several laws. For instance, Law 3304/2005 which transposed the Racial Equality Directive (2000/43) and the Framework Directive on Equal Treatment (2000/78/EC) guarantees equal treatment in employment and occupation, social protection and social advantages, education and access to goods and services which are available to the public. Moreover, criminal sanctions are imposed in **case** of denial of access to and supply of goods or services based on grounds of racial or ethnic origin, religious or other belief, disability, age or sexual orientation. As already mentioned, a new criminal offence has been recently established (art. 361B of the Criminal Code) punishing the provision of goods and services with the contemptuous exclusion of a person on racist or discriminatory grounds.

31. L. 3304/2005 is currently under review with the intention to increase its effectiveness. The amendments include, inter alia, the reinforcement of the Greek Ombudsman competences as Equality Body and the explicit inclusion of 'gender identity' and 'gender characteristics' as grounds of non-discrimination.

32. The above mentioned policies and actions in connection with the multi-thematic cooperation and contribution of civil society, which is strongly pursued, are expected to lead to more openness, inclusiveness and profound respect of human rights, minimizing, thus, racist violence and hate speech.